

Original

P-16

1909-10.

FILE No. 39 OF 09.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENTS

LEGISLATION.

A'' Collection : Serial Nos. 1—6.

APRIL 1912.

Amendment of the Indian Evidence Act as in force in Mysore with respect to the accounts and other documents relating to the affairs of the Palace.

TABLE OF CONTENTS.

Serial No. in file	Number and date of letter and contents	References	Page in part A
1	D. O. No. 1672, dated the 2nd December 1910, from Mr. T. Ananda Row, Esq., B.A., Dewan, to the Hon'ble Colonel Hugh Daly, C. E., C. I. E., Resident in Mysore. Forwards a copy of the Bill on the subject and states that it will be placed before the Legislative Council in due course.	Serial Nos. 1—5. Courts File 173 of 1908.	1
2	D. O. No. 7528, dated the 12th December 1910, from Mr. P. B. Warburton, F.A. Resident, to T. Ananda Row, Esq., B.A., C. I. E., Dewan. States that the Resident sees no <i>prima facie</i> objection to the Bill being laid before the Legislative Council.		2
3	Letter Pol. No. 378, dated the 2nd November 1911, from the Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore. Forwards a copy of the Bill as passed by the Legislative Council with a brief explanation of the amendments sought to be introduced and requests that the sanction of the Government of India may be obtained for the Bill being passed into law.		2
4	Letter No. 7298, dated the 30th November 1911, from the First Assistant Resident in Mysore, to the Dewan. Conveys the sanction of the Government of India subject to the usual reservation of power.		3
5	Government Order No. J. 2725, dated the 16th March 1912, to the Compiler, <i>Mysore Gazette</i> Directs him to publish the Bill as Regulation No. III of 1912.		3
6	Letter No. Pol. 870, dated the 15th April 1912, from the Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore. Forwards the usual number of spare copies of the Regulation.		4

1909-10.

GENERAL AND REVENUE SECRETARIAT.
(LEGISLATION)

NOTES.

FILE HEADING.

FILE No. 39 OF 09-10.

Amendment of the Evidence Act with respect to the accounts and other documents relating to the affairs of the Palace.

D.O. letter, dated Bangalore, 5th September 1909, from Mr. T. Govinda Rao, Private Secretary to Dewan, to Mr. K. S. Chandrasekhara Aiyar, Secretary to Government, General and Revenue Departments.

The Dewan desires that the enclosed letter of the 28th ultimo from the Huzur Secretary and the Palace file received therewith about the production in Civil Courts of Palace Accounts, etc., may be kindly circulated to Councillors and the subject brought up for discussion at the next meeting of Council.

The G. B. S. File on the subject is in the office.

D. O. No. 126, dated 28th August 1909, from the Huzur Secretary to Mr. T. Ananda Row, Dewan.

In sending for your kind information the enclosed Palace file, His Highness desires me to invite your kind attention to the fact that in spite of the assurance given by the Chief Court, the Subordinate Courts do not seem to exercise their discretion in the matter of such applications, as they should and are expected to do. The result is that the Palace Officer is harassed with vexatious requisitions for production of Palace records and accounts for purposes of evidence in civil suits between private parties. His Highness would therefore be obliged if you would very kindly discuss the matter with the Chief Judge, with a view to some satisfactory arrangement being come to in the matter. All that is asked for is that the Palace Officer should be spared the worry of having to attend to vague and frivolous requisitions for the production of Palace documents in civil courts in suits to which the Palace is no party at all. The file may obligingly be returned to me, when done with.

1. Circulated.

By Order,

K. S. CHANDRASEKHARA AIYAR.

6-9-09.

2. Seen.

K. P. PUTTANNA CHETTY.

6-9-09.

3. Seen.

H. V. NANJUNDAYYA.

6-9-09.

4. Forwarded (unofficially) to the Chief Judge for favour of opinion with reference to the Huzur Secretary's D. O. below (No. 126, dated 28th August 1909).

By Order,

K. S. CHANDRASEKHARA AIYAR,

Secy. to Government.

9-9-09.

5. The action of the Munsiff is distinctly incorrect. Instead of sending a proper reply to the Officer in charge of the Palace, he intimated that he had ordered the defendant's advocate to produce certified copies of certain records. These copies, even if obtained, could not be received in evidence. The attention of the Munsiff will be drawn to this matter.

ISMAY,

Chief Judge.

16-9-09.

6. The Chief Judge's note may be communicated to the Huzur Secretary.

K. S. CHANDRASEKHARA AIYAR.

19-9-09.

7. In the absence of a Regulation declaring that copies of the Palace Accounts may be received in evidence, there is little use as the Chief Judge says, in asking parties to produce certified copies. When the Munsiff passed this order, it should be expected that the party would have represented this difficulty and got it amended. The Palace Officer is not by law bound to grant any copies to private parties on application.

8. On the issue of another order as proposed by the Chief Court, it is probable that the Courts would adopt some procedure less likely to throw undue labour on the officials of the Palace Department.

H. V. NANJUNDAYYA.
19-9-09.

9. The subject may be discussed at a meeting of the Palace Officer, the Second Councillor and myself at Mysore.

T. ANANDA ROW,
Dewan.
9-10-09.

10. Subject discussed on 20th December 1909.
File submitted to Second Councillor.

C. S. BALASUNDARAM IYER.
21-12-09.

11. A note on the matter is appended.

H. V. NANJUNDAYYA.
26-1-10.

PRODUCTION OF PALACE ACCOUNTS IN COURTS.

12. As far as I could understand, the difficulty represented as existing is that requisitions for papers and accounts are often indefinite, and refer to very long periods, and that often the production of papers and accounts is sought, of which the production in a public Court at the instance of private parties is considered inexpedient.

13. In the matter of indefiniteness in requisitions, the Chief Court seems to have issued an order, which is nearly the reiteration of a well-understood rule, that a reasonably sufficient description of the documents required should be given in such summonses. If necessary the order may be repeated. But that can only go a little way to remedy the alleged difficulty. It can be much more effectually obviated by the Palace Officer himself asking for proper particulars to be given. Even a private person cannot be expected to obey the precept of a court, which does not give all the reasonable information required to ascertain what exactly is wanted of him.

14. The procedure of a court when calling for records and papers from other parties, is to frame the requisition on the memoranda supplied by the plaintiff or defendant in their applications. The Judge is not required to examine such memoranda beforehand and he can hardly have the time to do so. Disputed questions (either between the parties or between a party and a witness) as to the right to require the production of any documents or as to its relevancy are decided during the hearing of the case in regular course. It is hardly practicable to enquire that the Judge should do more. If the description given by a party is either insufficient, or if it appertains to documents he has no right to call for, he takes the risk of the Judge upholding the objection of the witness on this score. Similarly if the witness fails to produce the documents asked for on the score of sufficient description not being given, he takes the risk of the Judge either supporting him or of holding that it was reasonably definite. If the objection is on the score of relevancy alone, the witness is usually bound to produce the documents asked for and leave it to the Court to admit or reject them.

15. On the second question, to what extent the records of the Palace should be produced in courts at the instance of private parties, it is more difficult to devise proper means of obviating the objections raised. The rules of law as it stands at present are as follows.

16. The accounts of the Palace Môtikhana or other Departments do not fall under the definition of Public documents as given in Section 74 of the Evidence Act. No private party is therefore entitled to obtain a certified copy thereof under Section 76, nor would a certified copy be ordinarily admissible as evidence in a Court of Law. Parties who wish to rely on entries in these accounts have therefore to summon the original books. The original entries are inspected and marked as exhibits, but it is not necessary that the books should be left in court. Even if left, the risk of their being available for every curious outsider to read is not much, as they are secured in the possession of court officials, who as a rule have themselves neither the interest nor the time to indulge in idle curiosity about their contents. Even this however might be minimised by leaving certified copies of the entries marked as exhibits and taking back the books at once under Section 141 A. (Civil Procedure Code).

17. As for documents and records, which the Palace Officer may not wish to produce before the Courts on the score of the matter being confidential, it may be assumed that it is always the gracious desire of His Highness to allow private parties who desire to enforce their rights by a resort to legal tribunals all reasonable facilities to prove their claims even when the matters litigated on are in respect of dealings with the Palace. The records and documents that are likely to be called for may be divided into three classes; (1) ordinary day book and ledger accounts; (2) petitions, receipts, etc., presented by the parties dealing with the Palace; and (3) orders on disputed points, etc., passed by the Palace authorities concerning any of the matters in litigation.

18. No difficulty is likely to arise about the production of papers of the second class. The only trouble caused would be that involved in searching for them, which would be little or great according to the method in which papers are filed and preserved in the office. If the parties do not give a reasonable description, the Palace officer would be quite within his rights to decline to produce them. But if proper description is given, any trouble that may be caused would be necessary in the interests of public justice. These papers cannot well be kept back, whatever the consequences of their production may be to the litigating parties.

19. As for accounts, of course those that do not appertain to the matter in controversy cannot be called for by any court. But if they are called for relevantly, the Palace Officer is bound to produce them, as the law stands at present. One way of guarding against irrelevant accounts being unavoidably exposed would be to open separate books for record of transactions of a confidential nature. But whether the opening of such books is easy and convenient is a question for the Palace authorities to decide.

20. If it is desired to exclude or to minimise the inconvenience of the production of original accounts in courts, certified extracts of such accounts should be made receivable in evidence by legislation, as has been done in the case of bankers' books. The Palace Officer will in such cases have to certify that all entries relating to the matter in controversy have been correctly copied.

21. With regard to Class III, it is possible that some documents may be excluded as matters of State under Section 123 of the Evidence Act. A fresh provision may, if necessary be introduced into the Act under that section, making it optional with the Palace Officer to produce or to decline to produce any papers called for. But to guard the interests of the parties properly certain restrictions have to be placed on the admissibility of such documents. Thus if all the papers called for by both parties are not produced, the documents actually produced should not be admitted without the consent of both parties, unless they are either answers or explanations of papers already on record. Perhaps papers called for by a party but not put in evidence may be admissible against him; but the expediency of this exception is also doubtful.

22. The question, however, whether any special provisions should be introduced, deserves serious consideration. As far as I can make out, there is no appreciable disadvantage in the law as it stands at present, except the occasional inconvenience caused in searching for documents and in complying with requisitions received from the Courts. Such exceptional legislation has to be resorted to only to meet cases of extreme difficulty. As the matter involves an amendment of the law of evidence, we shall have to satisfy the Government of India of the necessity of fresh legislation. I would therefore humbly advise that any amendment of the law is not called for; and that the object sought, *i.e.*, "that the Palace officer should be spared the worry of having to attend to vague and frivolous requisitions for the production of Palace documents in Civil Courts in suits to which the Palace is no party at all", can be substantially secured under the provisions of the law in force at present.

23. I append herewith a draft of the amendments which may be necessary, if it is considered expedient to legislate for this purpose.

H. V. NANJUNDAYYA.

26-1-10.

DRAFT BILL.

Whereas it is expedient to amend the law of evidence with respect to the accounts and other documents maintained by the Palace Department of His Highness the Maharaja with reference to the affairs of the Palace, etc.

1. The following section shall be inserted after Section 77 of the Evidence Act (I of 1872):—

"77 A. (1) The provisions of Sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in Section 123 A) in the custody of the Palace officer, relating to the affairs of the Palace Department."

(2) In giving copies of entries of any books of account, the Palace Officer shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such court, add a further certificate that the copy contains a true extract of all the entries in the account books of the Palace, and that no other entries are to be found therein relevant to the matters in issue in such suit or proceeding."

Section 6, Bankers' Books Regulation.

2. The following shall be inserted under Section 123 of the said Act.

"123 A. (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the Palace officer, or applies to him for certified copies thereof under the provisions of Section 76 of this Act, the Palace officer may, if he considers that it is inexpedient to produce such documents in Court or to give certified copies thereof, by endorsement in writing refuse to do so.

(2) Whenever the Palace officer has declined to produce or give certified copies of all the documents required by both parties to a suit or other proceeding, the other documents, produced by him or certified copies of other documents of which he has furnished certified copies, shall not be admitted in evidence against any of the parties who objects to their being so admitted.

(3) The provisions of sub-section 1 of this section shall not apply to a suit or other proceeding to which the Palace officer is, in his official capacity, himself a party."

H. V. NANJUNDAYYA.
26-1-10.

24. To be circulated to 1st Councillor.

T. ANANDA ROW.
2-2-10.

25. Submitted to 1st Councillor.

C. S. BALASUNDARAM IYER.
4-2-10.

26. Before any legislation is undertaken, it will be desirable to consult the Judges of the Chief Court.

K. P. PUTTANNA CHETTY.
7-2-10.

27. I agree with 1st Councillor.

T. ANANDA ROW.
7-3-10.

28. Assistant Secretary, Branch III. Please consult Chief Court.

C. S. BALASUNDARAM IYER.
8-3-10.

29. Forwarded to the Registrar of the Chief Court for favor of obtaining the opinion of the Judges of that Court on the subject.

By Order,
S. HIRIYANNAIYA,
For Secy. to Govt., Gen. & Rev. Depts.

S. N.

30. A copy of Mr. Justice Krishna Rao's note is appended. The other Judges of the Chief Court concur in the view taken by him.

V. A. RAJARATNA MUDALIAR,
Registrar, Chief Court.
2-4-10.

31. As to the amount of inconvenience experienced by the Palace officers in complying with the requisitions issued by the Civil Courts, those officers are, I think, in a better position to form an opinion than any person outside the Palace can be. It is apparent from the repeated representations made by the said officers on the subject that the inconvenience suffered by them is considerable. If that be the case, it will not be possible, I fear, to remove that inconvenience to any appreciable extent by any orders and instructions which may be issued by the Chief Court. Special legislation alone can, in my opinion, produce the desired effect. It will not be possible, however, to enable the Palace authorities to entirely withhold the production of the Palace papers and accounts, for to do so would be opposed to public policy. All that can be done is to place the said papers and accounts in the same position as Bankers' Books and to allow certified copies thereof to be furnished to parties and to be used in evidence. To such special legislation no objection can possibly exist and no objection is likely, in any opinion, to be raised by the Government of India.

32. It does not appear to me that any amendment of Section 123 of the Evidence Act is necessary. If any of the papers in the Palace are considered to fall within the definition of the expression "affairs of State", it will be quite open to the Palace officers to claim the

privilege afforded by that section and to refuse to produce them or give certified copies of them to persons interested. In such a case, the law is clear that the Palace officers and not the Judges are the proper persons to decide whether the evidence sought to be placed before the Court should or should not be withheld in the public interests.

P. S. KRISHNA RAO.

33. Submitted to 1st Councillor.

C. S. BALASUNDARAM IYER.

6-4-10.

34. May be further discussed at a meeting of the Council. It seems to me that the suggestion of the Chief Court which is in effect the same as that made by the Second Councillor, except the proposal to amend Section 123, Indian Evidence Act, may be accepted.

K. P. PUTTANNA CHETTY.

7-4-10.

K. R. Y.

7-4-10.

C. S. B.

S. H.

12-4-10.

37. Yes.

T. A. R.

14-7-10.

Assistant Secretary.

C. S. B.

16-4-10.

S. H.

16-4-10.

38. Submitted with a draft.

S. N.

28-4-10

39. Put up a typed copy as revised.

40. Put up the gazette copies containing the statement of objects and reasons on the Bankers' Books Evidence Bill and the discussions thereon in the Supreme Legislative Council.

41. Why is a distinction made between a "Judge" and a "Court" in that bill? Put up our file also on the subject.

S. HIRIYANNAIYA.

9-5-10.

Submitted.

42. A typed copy of the draft bill as revised is put up.

43. A copy of the statement of objects and reasons on the Bankers' Books Evidence Bill and discussions thereon in the Supreme Legislative Council is also put up (*vide* flag S).

44. As regards the distinction made between a "Judge" and a "Court" in that Bill no information is to be found in the file relating to the Mysore Bankers' Books Evidence Regulation, V of 1902. The file is herewith linked. The point was raised by Mr. H. V. Nanjundayya, the then Secretary and Mr. C. Srinivasa Iyengar, the then Second Councillor has merely noted against it that the idea was to extend the provisions to cases of final appeal or revision; and that it required further consideration (*vide* office notes, typed copy, page 7). No further discussion on the point has been recorded.

S. V. S.

23-5-10.

S. N.

25-5-10

45. The draft put up follows closely on the Banker's Book Evidence Regulation of 1902. I have not been able to find out why in this Regulation a distinction has been made between the meaning of a "Court" and "Judge" though there was good reason for the distinction in the English Statute. I have therefore uniformly used only the word "Court" which is sufficiently comprehensive.

46. Attention is invited to the last clause regarding costs. I have not adopted the provisions making the Bank pay costs, as perhaps they would be inappropriate in the case of the Palace Officer.

S. HIRIYANNAIYA.
25-5-10.

47. Clause 2 of the draft.

In the definition of Palace Officer, the words "appointed by the Government of Mysore" may be replaced by the words "designated as such and appointed."

48. Clause 5. It is to be feared that this provision permitting the inspection of Palace records by private parties will be open to much objection on the part of the Palace authorities and one of the main disadvantages of the present system under which original accounts, etc., are produced in Court is that it affords an opportunity to persons unconnected with the Palace to go over the books and peruse items which it is undesirable that they should see.

49. To meet this objection the permission to parties to inspect the records should be done away with and only the latter portion obliging the Palace Officer to give copies of all entries and to certify that no other entries are to be found, should be retained. And even as regards these some discretion should be left to the Palace Officer to refuse copies of any items which may be of a confidential nature. Where such a refusal is made it will rest with the Court to appraise the other evidence put before it at what it is worth judging by probabilities, etc.

50. It is likely that requisitions to search the books and give copies of all items bearing on a particular matter may impose a large amount of labor on the Palace Officer and provision may perhaps be made for the Court awarding to the Palace Officer—by levy from the party—of suitable searching and copying fees.

51. The omission of the provisions about order of costs against the Palace Officer seems to be all right.

C. S. BALASUNDARAM IYER.
3-6-10.

52. I shall discuss the draft with the Assistant Secretary if he brings the file in Mysore personally, along with all references. I am disposed to think that my draft is better suited.

H. V. NANJUNDAYYA.
6-6-10.

S. H.
6-6-10.

53. If the matter is taken up at meeting, I shall be able to explain the reasons for preferring either form of the draft.

H. V. NANJUNDAYYA.
6-8-10

54. Yes, please bring up at a Council meeting.

T. ANANDA ROW.
15-8-10.

55. Note for meeting and circulate to 1st Councillor also.

C. S. BALASUNDARAM IYER.
15-8-10.

Extract from the Proceedings of the 255th meeting of the Council of His Highness the Maharaja held at Bangalore on the 12th and 13th September 1910.

59. Subject. --(Clause ii of the schedule.)

A bill to amend the Law of Evidence with respect to the Palace records.

Opinion of the Council.

It seems inexpedient to adopt special legislation on this subject, but if any such legislation is considered absolutely necessary, either of the two alternative draft bills may be taken up and placed before the Legislative Council in due course.

T. ANANDA ROW.

A bill to amend the Law of Evidence with respect to the Palace records.

Whereas it is expedient to amend the Law of Evidence with respect to the accounts and other documents maintained by the Palace Department of His Highness the Maharaja with reference to the affairs of the Palace, etc.

1. The following section shall be inserted after Section 77 of the Evidence Act, (I of 1872):—

“77 A (1) The provisions of Sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in Section 123 A) in the custody of the Officer in charge of the Palace Establishments, Mysore, relating to the affairs of the Palace Department.

(2) In giving copies of entries of any books of account, the Officer in charge of the Palace Establishments, Mysore, shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such Court, add a further certificate that the copy contains a true extract of all the entries, in the account books of the Palace, and that no other entries are to be found therein, relevant to the matters in issue in such suit or proceeding.

2. The following shall be inserted under Section 123 of the said Act :—

123 A (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the Officer in charge of the Palace Establishments, Mysore, or applies to him for certified copies thereof under the provisions of Section 76 of this Act, the said Officer may, if he considers that it is inexpedient to produce such documents in Court or to give certified copies thereof by endorsement in writing refuse to do so.

(2) Whenever the Officer in charge of the Palace Establishments, Mysore, has declined to produce or give certified copies of all the documents required by both parties to a suit or other proceedings, the other documents produced by him or certified copies of other documents of which he has furnished certified copies shall not be admitted in evidence against any of the parties who objects to their being so admitted.

(3) The provisions of sub-section 1 of this section shall not apply to a suit or other proceeding to which the Officer in charge of the Palace Establishments, Mysore, is, in his official capacity, himself a party.”

[B] *The Palace Records Evidence Bill.*

A Bill to amend the Law of Evidence with respect to the Palace Records.

Whereas it is expedient to amend the Law of Evidence with respect to the Records of the Palace of His Highness the Maharaja of Mysore; His Highness the Maharaja is pleased to enact as follows :—

Title, extent and commencement.

1. (1) This Regulation may be called “The Palace Records Evidence Regulation, 19 .”

(2) It extends to the whole of Mysore; and

(3) It shall come into force at once.

Definitions.

2. In this Regulation unless there is something repugnant in the subject or context—

(1) “Palace Officer” means an officer appointed by the Government of Mysore, to administer the affairs of the Palace of His Highness the Maharaja of Mysore.

(2) “Palace Records” means papers, accounts, books and other records relating to the affairs of the Palace and in the custody of the Palace Officer.

(3) “Legal proceeding” means any proceeding or enquiry in which evidence is or may be given and includes an arbitration.

(4) “The Court” means the person or persons before whom a legal proceeding is held or taken.

(5) “Trial” means any hearing before the court at which evidence is taken, and

(6) “Certified copy” means a copy of any entry in the Palace records together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in a Palace record and was made in the usual and ordinary course of business and that such record is still in the custody of the Palace Officer, such certificate being dated and subscribed by the Palace Officer with his name and official title.

3. Subject to the provisions of this Regulation, a certified copy of any entry in a Palace Record shall, in all legal proceedings, be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible but not further or otherwise.

4. The Palace Officer shall not, in any legal proceeding to which he is not a party in his official capacity, be compellable to produce any Palace Record, the contents of which can be proved under this Regulation, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court made for special clause.

5. (1) On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entries in a Palace Record for any of the purposes of such proceeding or may order the Palace Officer to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the Palace Records relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the Palace Officer and shall be served on the Palace Officer three clear days (exclusively of authorised holidays) before the same is to be obeyed, unless the court shall otherwise direct.

(3) The Palace Officer may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce the Palace Records at the trial or give notice of his intention to show cause against such order and thereupon the same shall not be enforced without further order.

6. The costs of any application to a court under or for the purposes of this Regulation and the costs of anything done or to be done under an order of court made under or for the purposes of this Regulation, shall be in the discretion of the court.

Submitted to His Highness.

With reference to the Huzur Secretary's D. O. letter No. 126, dated 28th August 1909, the subject of production of Palace accounts and papers in Civil Courts at the instance of private parties was further considered by the Chief Court and by the Councillors.

(2) In his note dated 26th January 1910, the Second Councillor discusses at length the inexpediency of adopting special legislation to restrict the production of Palace documents in Civil Courts and goes on to suggest that if special legislation is required it may take the shape of an amendment of the law of Evidence. This amendment proposes to treat the Palace Accounts as public documents of which certified copies may be admitted without proof under Sections 76 and 77. It is also proposed to empower the Palace Officer to withhold the production of any document or to refuse the grant of certified copies thereof under Section 123. This draft amendment of the Indian Evidence Act, is marked A.

(3) The Chief Court is of opinion that to withhold the production of the Palace papers and accounts in Civil Courts would be opposed to public policy. The Court is not in favour of any amendment of Section 123 of the Evidence Act. The Judges say that "all that can be done is to place the said papers and accounts in the same position as Bankers' Books and to allow certified copies thereof to be furnished to parties and to be used in evidence. To such special legislation no objection can possibly exist and no objection is likely to be raised by the Government of India."

(4) As suggested by the Chief Court, a draft bill on the lines of the Bankers' Books Evidence Act prepared by Mr. Hiriyanalaiya was circulated to Councillors. It is marked B in the file.

(5) Both the drafts allow the proof of Palace records by the production of certified copies. The main difference is in the provision made in draft A for the Palace Officer to decline to furnish copies of documents in those cases in which he may consider it inexpedient to do so. This exemption is not contained in draft B which follows closely the Bankers' Books Evidence Regulation.

(6) The Council considered the draft bills at a meeting. They are of opinion that it seems inexpedient to adopt special legislation, but that if any such legislation is considered absolutely necessary, either of the two alternative drafts A and B may be taken up and placed before the Legislative Council in due course. The Palace authorities may make the selection according to their convenience.

T. ANANDA ROW.

26-9-10.

With reference to File No. 1520, dated 26th September 1910, which I return herewith, His Highness desires me to say that the present state of affairs calls for remedy, and that if this latter can be obtained only by fresh legislation recourse must be had to it. In the light of this view, His Highness approves of the draft bill marked A and he would be obliged if you would kindly have the matter put through now.

P. RAGHAVENDRA RAO
29-9-10.

60. Put up D. O. to the Resident and Statement of Objects and Reasons.

S. HIRIYANNAIYA.
1-10-10.

61. Referring as it does to the affairs of the Palace, it is a matter for consideration whether the Bill need go before the Legislative Council as it seems to fall within the proviso (clause a) to sub-section (2) of Section 12 of the Legislative Council Regulation; there is a specific statement in the Council resolution that the matter will be placed before the Legislative Council. If the matter is held to fall within the proviso referred to above, demi, official correspondence with the Residency will be unnecessary. They may be approached straightway for obtaining the sanction of the Government of India to the bill in question.

Submitted for orders.

T. K. S.
7-10-10.
S. N.
7-10-10.

62. The intended legislation refers to the accounts and papers kept by the Palace Officer and does not seem to affect the members of the Royal Family.

63. Please put up the usual drafts to the Residency and of the Statement of Objects and Reasons.

S. HIRIYANNAIYA.
28-10-10.

64. Drafts submitted.

T. K. S.
7-11-10.
S. N.
7-11-10.

65. (1) The three drafts as revised may be approved.

(2) In the draft bill I have ventured to make a few minor alterations of a purely formal character. They are indicated in pencil and may, if there be no objection, be approved.

S. HIRIYANNAIYA.
23-11-10.

66. Approved.

H. V. NANJUNDAYYA.
25-11-10.

67. The draft D. O. to the Residency approved by the Dewan has been issued from the Dewan's office and the draft placed on file.

1. D. O. No. 1672, dated 2nd December 1910, to the First Assistant Resident.

Forwards a copy of the bill to amend the Indian Evidence Act as in force in Mysore with respect to the records in the custody of the officer in charge of the Palace Establishment with a statement of objects and reasons.

2. D. O. No. 7528, dated 12th December 1910, from the First Assistant Resident.

States that the Resident sees no *prima facie* objection to the bill being laid before the Legislative Council.

Submitted.

T. K. S.
14-12-11.
S. N.
14-12-11.

68. (1) Submitted to Second Councillor.

(2) This will be noted for the next meeting or if the Dewan directs, the bill may be published in the *Gazette*.

S. HIRIYANNAIYA.
14-12-10.
H. V. NANJUNDAYYA.
16-12-10.

69. Seen.

70. The bill may be published in the *Gazette*, and introduced at the next meeting.
T. ANANDA ROW.
20-12-10.
71. Early.
S. HIRIYANNAIYA.
20-12-10.
72. I wish to see whether this is one of the matters excepted from the powers of the Legislative Council.
H. V. NANJUNDAYYA.
24-4-11.
73. Personally submitted to Second Councillor and Dewan. It was decided that the matter does not fall within the excepted matters.
S. HIRIYANNAIYA.
25-4-11.
74. The bill was published in the *Gazette* under Rule 32 of the Legislative Council Rules and was introduced and read before the Council at the meeting held on the 27th April 1911 when it was referred to a Select Committee for consideration. The report of the Select Committee was considered at the meeting held on the 11th September 1911 when it was adopted by the Council, which resolved to take up and pass the bill at a subsequent meeting of the Council. The sanction of the Government of India has now to be obtained to enable the Council to do so. Submitted with a draft letter to the Residency for approval.
T. K. S.
20-10-11.
S. N.
24-10-11.
75. Draft may be approved.
S. HIRIYANNAIYA.
27-10-11.
76. Draft approved by Second Councillor, 27th October 1911.
77. Draft approved by the Dewan, 30th October 1911.
78. Issue.
C. S. BALASUNDARAM IYER.
31-10-11.
3. No. Pol. 378, dated 2nd November 1911, to the First Assistant Resident.
Forwards two copies of the bill as finally adopted by the Legislative Council for obtaining the sanction of the Government of India for its being passed into law.
4. No. 7298, dated 30th November 1911, from the First Assistant Resident.
Conveys the sanction of the Government of India for the bill being passed into law with the usual reservation of power vested in the Governor-General in Council by virtue of Article 19 of the Instrument of Transfer.
Submitted.
T. K. S.
1-12-11.
S. N.
2-12-11.
79. Note for meeting.
S. HIRIYANNAIYA.
2-12-11.
80. The bill was passed finally by the Legislative Council at the meeting held on the 21st February 1912. The sanction of His Highness the Maharaja has now to be obtained for its promulgation as law. Submitted with a copy of the bill as finally passed for the Dewan's signature being obtained thereto, as required by Rule 52 of the Legislative Council Rules.
T. K. S.
24-2-12.
S. HIRIYANNAIYA.
26-2-12.
81. Dewan.
C. S. BALASUNDARAM IYER.
28-2-12.

Submitted to His Highness.

82. The bill to amend the Law of Evidence with respect to the production of the Palace records in Civil Courts was finally passed by the Legislative Council at the meeting held on the 21st February 1912. His Highness' assent may be accorded for its promulgation as law.

T. ANANDA ROW.

5-3-12.

Order.

83.

K. R. W.,

H. H. the Maharaja of Mysore.

8-3-12.

84. Secretary.

T. A. R.

9-3-12.

85. III.

C. S. BALASUNDARAM IYER.

11-3-12.

86. Put up draft order.

(Dewan's signature to the bill has to be obtained).

S. HIRIYANNAIYA.

12-3-12.

87. Draft submitted for approval.

T. K. S. S. N.

12-3-12.

88. Issue.

(Send the file to the D. O., for obtaining the Dewan's signature).

S. HIRIYANNAIYA.

12-3-12.

No. J. 2725, dated 16th March 1912, to the Compiler, Mysore Gazette.

Forwards the bill which received the assent of His Highness on 8th March 1912 to be published as Regulation III of 1912.

89. This may now be sent to the Dewan's Office for obtaining the signature of the Dewan to the bill as finally passed by the Legislative Council and approved by His Highness the Maharaja.

File received back with the bill signed by the Dewan.

Submitted.

Spare copies of the Regulation have been received from the Press and have been compared. Copies have to be sent to the Residency as usual and the usual draft is herewith put up.

S. N.

10-4-12.

90. Issue.

S. HIRIYANNAIYA.

10-4-12.

6. No. Pol. 810, dated 15th April 1912, to the First Assistant Resident.

Forwards ten copies of the Regulation (III of 1912) and requests him to forward one copy to His Highness the Nizam's Government.

Proceedings of the Government of His Highness the Maharaja of Mysore.

amendment of the Evidence Act with respect to the accounts and other documents relating to the affairs of the Palace.

D. O. No. 1672—En. 2, dated Bangalore, 2nd December 1910,
from the Dewan to the Resident.

I enclose herewith copy of a bill to amend the Indian Evidence Act as in force in Mysore with respect to the records in the custody of the officer in charge of the Palace Establishments, with a statement of Objects and Reasons explaining the nature and scope of the bill. The necessity for the bill has arisen from the fact that the existing law enables private parties to a suit or other judicial proceeding to summon the officer in charge of the Palace Establishments to produce papers and accounts relating to Palace affairs without regard to their nature or importance. Such indiscriminate requisitions have, of late years, considerably increased, and, not infrequently, they are vague and indefinite, with the result that the Palace Officer is put to a great deal of trouble and inconvenience in obeying the summonses issued by Courts. It was felt that some action was called for and the matter was carefully considered by Government in consultation with the Chief Court with the view of devising some remedy, without having recourse to fresh legislation, but it was found that this was not possible. The present bill has, therefore, been prepared with the object of dispensing with the necessity for the production in Court of the original records in the custody of the Palace Officer and enabling parties to file certified copies in their stead. If, in any particular case, the Palace Officer should be of opinion that, in consequence of the confidential nature of the original document or for other reasons, even certified copies should not be granted, he may refuse to do so; and in such cases, any other paper or certified copy of it that might have been filed or offered as evidence in the case shall also be excluded, as it is obviously undesirable that only a portion of the evidence bearing on the matter in dispute should be admitted. Such cases will however be few and the Palace Officer will be instructed to facilitate the administration of justice by complying, as far as possible, with the requests of litigants in the matter of obtaining access through Court to papers that may be really useful to them. But it is necessary that parties should not be allowed to abuse this privilege and it is to meet such cases that the bill has been framed.

In conclusion, I am to intimate that the bill will be placed before the Legislative Council in due course.

Enclosure

A BILL TO AMEND THE INDIAN EVIDENCE ACT AS IN FORCE IN MYSORE.

Whereas it is expedient to amend the Indian Evidence Act as in force in Mysore with respect to the accounts and other documents relating to the affairs of the Palace, and maintained by the Officer in charge of the Palace Establishments of His Highness the Maharaja of Mysore. His Highness the Maharaja is pleased to enact as follows:—

1. The following section shall be inserted after Section 77 of the Indian Evidence Act (I of 1872) as in force in Mysore, viz.:—

“77A (1) The provisions of Sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in Section 123A) in the custody of the officer in charge of the Palace Establishments, Mysore, relating to the affairs of the Palace Department.

(2) In giving copies of entries of any books of account, the Officer in charge of the Palace Establishments, Mysore, shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such Court, add a further certificate that a copy contains a true extract of all the entries in the account books of the Palace, and that no other entries are to be found therein, relevant to the matters in issue in such suit or proceeding.”

2. The following shall be inserted under Section 123 of the said Act :—

“123A (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the officer in charge of the Palace Establishments, Mysore, or applies to him for certified copies thereof under the provisions of Section 76 of this Act, the said officer may, if he considers that it is inexpedient to produce such documents in court or to give certified copies thereof, by endorsement in writing, refuse to do so.

Proceedings of the Government of His Highness the Maharaja of Mysore,

Amendment of the Evidence Act with respect to the accounts and other documents relating to the affairs of the Palace.

(2) Whenever the Officer in charge of the Palace Establishments, Mysore, has declined to produce or give certified copies of all the documents required by both parties to a suit or other proceeding, the other documents produced by him or certified copies of other documents of which he has furnished certified copies, shall not be admitted in evidence against any of the parties who objects to their being so admitted.

(3) The provisions of sub-section 1 of this section shall not apply to a suit or other proceeding to which the Officer in charge of the Palace Establishments, Mysore, is, in his official capacity, himself a party."

STATEMENT OF OBJECTS AND REASONS.

It has been brought to the notice of Government that considerable inconvenience is at present experienced by the officer in charge of the Palace Establishments, Mysore, in his having to attend to requisitions of Civil Courts for the production in court, at the instance of private parties, of accounts and other documents connected with the affairs of the Palace. Under the existing law, the production of these papers cannot be refused by the Palace officer; nor are certified copies of these ordinarily admissible in evidence. Requisitions by Courts for such papers have very largely increased of late years and as, not infrequently, they are vague and indefinite, the officer in charge of the Palace Establishments is put to a great deal of trouble and inconvenience. With the view, therefore, of minimising this inconvenience, while affording all reasonable facilities to private parties desiring the production of Palace papers in Courts, it has been considered desirable to amend the law of evidence so as to allow certified copies of these documents being admitted in evidence. It is found necessary to empower the Palace officer to withhold the production of these documents or to refuse the grant of certified copies if considering the nature of the documents sought to be produced, he deems it undesirable that they should be made available to the public. In such cases, the interests of private parties are specially safeguarded by providing that whenever the officer in charge of the Palace Establishments, Mysore, has declined to produce, or give certified copies of all the documents required by both parties to suit or other proceeding, the other documents produced by him or certified copies of other documents of which he has furnished certified copies shall not be admitted in evidence against any of the parties who objects to their being so admitted.

Letter No. 7528, dated Bangalore, 12th December 1910, from Mr. P. B. Warburton, First Assistant to the Hon'ble the Resident in Mysore, to the Dewan.

I am desired to acknowledge, with thanks, the receipt of your D. O. letter No. 1672, dated the 2nd December 1910, forwarding a copy of a bill to **Serial No. 2.** amend the Indian Evidence Act, 1872 (I of 1872) as in force in the Mysore State, and, in reply, to state that the Resident sees no *prima facie* objection to the bill being laid before the Legislative Council.

Letter No. Pol. 378, dated 2nd November 1911, from the Secretary to the Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore, Bangalore.

I am directed to forward herewith a bill further to amend the Indian **Serial No. 3.** Evidence Act as in force in Mysore and to state as follows :—

2. The Palace of His Highness the Maharaja has extensive dealings with various private persons as contractors and otherwise, and has accounts and other records regularly kept in connection with such transactions. But in various suits to which some of these contractors happen to be parties and with which the Palace Department is not concerned the officer in charge of the Palace establishment is often required to produce the accounts and other papers in his charge as evidence. As far as possible such requisitions are complied with; but it is reported that a great deal of trouble and inconvenience is caused to that officer on account of the vagueness of the requisitions and some times on account of the call for original books which are required for reference in the Palace Office. It is also sometimes found that papers are called for which certain entries not relevant to suits and which it is not expedient to disclose to parties having no concern with the matter recorded. As the law now stands the production of these papers cannot be referred by the Palace officer nor are certified copies of these admissible in evidence with the view therefore of minimising this inconvenience while affording all reasonable facilities to private parties desiring the production of Palace papers in Courts, it has been considered desirable to amend the law so as to allow certified copies of these documents being admitted in evidence. The first clause of the bill accordingly proposes to extend the provisions of Sections 76 and 77 of the Indian Evidence Act to the documents in question. The other clause of the bill empowers the Palace officer to withhold the production of documents or to refuse the grant of certified copies, if

Judicial and Legislative (Legislation), dated April 1911.

Amendment of the Evidence Act with respect to the accounts and other documents relating to the affairs of the Palace.

considering the nature of the documents sought to be produced he deems it undesirable that they should be made available to the public. In such cases the interests of private parties are protected by providing that whenever the Palace officer exercise this power the other documents produced by him or certified copies of those documents shall not be admitted in evidence against any of the parties who objects to their being so admitted.

3. The bill was considered by the Legislative Council at the meetings held on the 27th April 1911 and 11th September 1911 and was approved both by a select committee of that body and by the full council.

4. I am now to request that the sanction of the Government of India may be obtained for the bill being passed as law.

ENCLOSURE.

A BILL TO AMEND THE INDIAN EVIDENCE ACT AS IN FORCE IN MYSORE.

Whereas it is expedient to amend the Indian Evidence Act as in force in Mysore with respect to the accounts and other documents relating to the affairs of the Palace and maintained by the Officer in charge of the Palace Establishments of His Highness the Maharaja of Mysore; His Highness the Maharaja is pleased to enact as follows:—

1. The following section shall be inserted after Section 77 of the Indian Evidence Act (I of 1872) as in force in Mysore, viz.:—

“77 A (1) The provisions of Sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in Section 123 A) in the custody of the Officer in charge of the Palace Establishments, Mysore, relating to the affairs of the Palace Department.

(2) In giving copies of entries of any books of account, the Officer in charge of the Palace Establishments, Mysore, shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such Court, add a further certificate that the copy contains a true extract of all the entries in the account books of the Palace, and that no other entries are to be found therein, relevant to the matters in issue in such suit or proceeding.”

2. The following shall be inserted under Section 123 of the said act, viz.:—

“123 A (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the officer in charge of the Palace Establishments, Mysore, or applies to him for certified copies thereof under the provisions of Section 76 of this Act, the said officer may, if he considers that it is inexpedient to produce such documents in Court or to give certified copies thereof, by endorsement in writing, refuse to do so.

(2) Whenever the Officer in charge of the Palace Establishments, Mysore, has declined to produce or give certified copies of all the documents required by both parties to a suit or other proceeding, the other documents produced by him or certified copies of other documents of which he has furnished certified copies, shall not be admitted in evidence against any of the parties who objects to their being so admitted.

(3) The provisions of sub-section 1 of this section shall not apply to a suit or other proceeding to which the officer in charge of the Palace Establishments, Mysore, is, in his official capacity, himself a party.

Letter No. 7298, dated the 30th November 1911, from P. B. Warburton, Esq., I. C. S., First Assistant to the Hon'ble the Resident in Mysore, to the Dewan of Mysore.

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No. 378 Pol., dated the 2nd November 1911, forwarding for the sanction of the Government of India, a draft bill which the Durbar propose to enact to amend the Indian Evidence Act, 1872 (I of 1872). **Serial No. 4.**

2. In reply, I am to say that the Governor-General in Council has been pleased to accord his consent to the draft bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

Order No. J. 2725—Legis. 39-09, dated 16th March 1912.

That the accompanying bill to amend the Indian Evidence Act as in force in Mysore which received the assent of His Highness the Maharaja on the 8th day of March 1912, be published for general information as Regulation No. III of 1912. **Serial No. 5.**

Proceedings of the Government of His Highness the Maharaja of Mysore,

Amendment of the Evidence Act with respect to the accounts and other documents relating to the affairs of the Palace.

REGULATION No. III OF 1912.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON
THE 8TH DAY OF MARCH 1912.)

A REGULATION TO AMEND THE INDIAN EVIDENCE ACT AS IN FORCE IN MYSORE.

Whereas it is expedient to amend the Indian Evidence Act as in force in Mysore with respect to the accounts and other documents relating to the affairs of the Palace and maintained by the Officer in charge of the Palace Establishments of His Highness the Maharaja of Mysore; His Highness the Maharaja is pleased to enact as follows:—

1. The following section shall be inserted after Section 77 of the Indian Evidence Act, (I of 1872) as in force in Mysore, *viz.*:—

“77 A. (1) The provisions of Sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in Section 123 A) in the custody of the Officer in charge of the Palace Establishments, Mysore, relating to the affairs of the Palace Department.

(2) In giving copies of entries of any books of account, the Officer in charge of the Palace Establishments, Mysore, shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such Court, add a further certificate that the copy contains a true extract of all the entries in the account books of the Palace, and that no other entries are to be found therein, relevant to the matters in issue in such suit or proceeding.”

2. The following shall be inserted under Section 123 of the said Act, *viz.*:—

“123 A. (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the Officer in charge of the Palace Establishments, Mysore, or applies to him for certified copies thereof under the provisions of Section 76 of this Act, the said Officer may, if he considers that it is inexpedient to produce such documents in Court or to give certified copies thereof, by endorsement, in writing, refuse to do so.

(2) Whenever the Officer in charge of the Palace Establishments, Mysore, has declined to produce or give certified copies of all documents required by both parties to a suit or other proceeding, the other documents produced by him or certified copies of other documents of which he has furnished certified copies, shall not be admitted in evidence against any of the parties who objects to their being so admitted.

(3) The provisions of sub-section (1) of this section shall not apply to a suit or other proceeding to which the Officer in charge of the Palace Establishments, Mysore, is, in his official capacity, himself a party.”

Letter Pol. No. 870—Enc. 10, dated the 15th April 1912, from the Secretary to the Government, General and Revenue Departments, to the First Assistant to the Hon'ble the Resident in Mysore, Bangalore.

I am directed to forward herewith a copy of Regulation No. III of 1912, a Regulation to amend the Indian Evidence Act as in force in Mysore, with **Serial No. 6.** nine spare copies, and to request that a copy may, as usual, be forwarded to His Highness the Nizam's Government.